Supreme Court, U.S.
FILED

No. 02 391 SEP 9 2002

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In The

Supreme Court of the United States

MARVIN D. WASHINGTON,

Petitioner,

v.

WEARY E. McFADDEN;
SHOWNIKA McCAULEY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MARYLAND COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the requirement that notice be given of a final judgment is satisfied when a jury foreperson reads the verdict in open court or whether the judgment must be sent to all parties upon entry to alert them to the commencement of the appeal period.

2. Whether Federal Rule of Civil Procedure 77(d) and newly adopted Appellate Rule 4(a)(6) require that notice of a judgment be made by mailing written notice on the date of entry or whether actual notice by other means is sufficient.

STATEMENT OF RULE 29.1 COMPLIANCE

Pursuant to Supreme Court Rule 29.1 petitioner and respondent are individuals and there are no publicly traded companies, parent corporations or nonwholly owned subsidiaries involved in this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the Maryland Court of Appeals in this case.

OPINIONS BELOW

The Circuit Court for Prince George's County in the State of Maryland (per Krauser, Sherrie, L.) denied petitioner's motion to vacate and reissue judgment (App. 14). The Maryland Court of Special Appeals (per Thieme, J.) affirmed (App. 1). On December 14, 2001 the Maryland Court of Appeals' denied petitioner's petition for writ of certiorari (App. 19) and petitioner's motion for reconsideration and panel rehearing (App. 18). All opinions are unreported.

STATEMENT OF JURISDICTION

Jurisdiction in the Maryland Circuit Court was based on the amount in controversy and the residence of the respondent. The Maryland Court of Appeals enter its order denying petitioner's petitioner for writ of certiorari on December 14, 2001 and denied a panel rehearing on June 11, 2002. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of the Maryland Rules 2-601 and 1-324, Federal Rule of Civil Procedure 58, and Fed. R. App. P. 4(a)(6) relevant to this petition are reprinted in the Petitioner's Appendix (App. 20-23).

STATEMENT OF THE CASE

The essence of this case strikes at the core of perhaps the most important principle of appellate procedure. That issue involves determining when the 30 day appeal period begins and whether the court must notify the parties of this milestone by sending them a copy of the judgment. The two issues obviously interplay with each other. It is from this date of entry of the judgment on the docket that the appeal period and the time for filing post trial motions commence. However, without actual notice of this important date a litigant cannot determine how long the judgment is appealable or when judgment is final and the litigation concluded. In other words, the tolling of an appeal period presupposes notice of when it begins.

These basic principles regarding treatment of judgments are entrenched and assumed in the procedural law of most state and federal courts across the country. However, the State of Maryland only recently adopted Rule 2-601 which set the procedures to memorialize a judgment, enter it on the case docket and notify the parties of this event by mailing them a copy of the judgment. The instant case is the first case entertained by the State's highest court in which the court addressed – or refused to address - whether the

clerk was obligated to send separate notice to the parties of the entry of a final judgment where the verdict had been previously announced in court. The Advisory Committee also recently adopted amendments to Appellate Rule 4(a)(6) which has lead to dissension among Federal Circuits on the same issue.

Maryland Rule 2-601 appears to require notice upon entry of the judgment. However, the State's highest court let stand an opinion that held that notice of the "entry" of judgment was properly given when the verdict was read in open court by the jury foreperson following a trial. The court made this ruling even though the judgment memorializing that verdict was not formally entered on the case docket until forty days following the trial. Under the Maryland Rules the appeal period began after entry on the docket not when the verdict was announced. Since petitioner did not receive notice at this time he lost his right to appeal.

What follows is the procedural history and incidents of trial most of which the parties and the court stipulated to on appeal:

1. Petitioner Marvin D. Washington is a resident of the State of Maryland who brought a personal injury action against respondent Shownika A. McCauley. A trial by jury was had on June 5-6, 2000 which resulted in a jury verdict in favor of petitioner that granted money damages. The jury foreperson announced the verdict orally in front of the parties and the court. The trial court at that time did not indicate that the oral rendering of the verdict would serve as notice to the parties of entry of the judgment or that the

parties would not receive separate notice of the entry of the judgment.

During the course of pretrial and trial proceedings the trial court made various evidentiary and substantive rulings which petitioner believed adversely affected the monetary award. In Maryland an aggrieved party has a substantive right statutorily given to appeal a ruling or order following entry of a final judgment. *Sapero & Sapero v. Bel Air Plumbing & Heating Contractors, Inc.*, 396 A.2d 317, 321 (Md. App. 1979). Petitioner sought an appeal.

2. On June 8, 2002 two days after the trial the clerk of the Court reduced the verdict to a written document entitled "Judgment" ("Judgment"). (App. 16). It was stamped "FILED", however, it was not entered on the computerized docket at that time. On July 20, 2002 the Judgment was finally entered on the docket and stamped "Indexed on the General Index". The general index in the circuit court where the action was litigated was the computerized docket sheet detailing the history of the case. According to the docket sheet or "record abstract" notice of the entry of judgment was not sent to petitioner's lead counsel or his local counsel. [1] Lead counsel, the undersigned

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[1] The docket sheet stated that notice was sent to petitioner's previous local counsel. However, neither petitioner's lead or then current local counsel received notice of the judgment's entry from any source. Maryland Rule 1-321 requires that notice of all "pleadings or other paper" filed with the court be sent to the attorney who last filed papers in the court. The judgment was such a paper and lead counsel filed all papers in the proceeding as well as the last motion to compel discovery and for sanctions.

("counsel"), handled the entire matter and filed all papers pertaining to the case. According to his affidavit lead counsel did not receive notice of the entry of judgment from any source.

Following the trial counsel for petitioner undertook diligent efforts to ascertain when and if the judgment had been entered so that he could note his client's appeal. [2] Counsel called the court on at least four occasions and traveled to the court to check the case jacket and the docket entries. At all times he was informed that judgment had not been entered. On July 7, 2000 counsel noted his client's premature appeal. Upon review of the court rules counsel then determined that he could not file the "Information Sheet" until ten days after the judgment was entered. Since he had no idea when judgment was entered he could not file the information sheet. The appeal was dismissed.

On August 9, 2000, twenty days after entry of judgment counsel wrote to the trial judge representing that final judgment had not been entered. Counsel stated that his client wished to note his appeal. Counsel did not receive a reply to his August 9, 2000 correspondence and on August 31, 2000 he submitted a

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Therefore, he was entitled to notice. *J.T. Masonry Co. v. Oxford Const*, 74 Md. App. 598, 539 A.2d 694 (Md. App. 1988). More importantly all previous orders had been sent directly to Mr. Palmer. The appeal, however, was denied because the court found the verdict was read in open court and petitioner noted a premature appeal.

[2] In his affidavit Mr. Palmer also noted that Mr. Washington had a valid cause of action. This is relevant because under the law the court was to determine if Mr. Palmer acted with diligence and whether petitioner had a valid cause of action. If did not do this.

proposed final judgment to the law clerk for the trial court. The appeal period in the case lapsed on August 19, 2000. On September 8, 2000 the law clerk sent a copy of the Judgment to counsel.

3. Thirty days after receiving notice of the entry of judgment Petitioner filed a Motion for the Vacating and Reissuance of the Final Judgment (motion to vacate"). On January 29, 2001 the trial court denied petitioner's motion to Vacate ruling that that the parties had "actual notice" of the judgment when the foreperson announced it in court. On October 5, 2001 the Court of Special Appeal of Maryland affirmed. On December 14, 2001, the Court of Appeals of Maryland denied petitioner's writ of certiorari to the Court of Special Appeals on the grounds that granting the writ was not in the public interest. (App. 1). Petitioner filed a motion for reconsideration outlining precisely why resolution of the issue was in the public interest. This motion was denied. Petitioner also filed a motion for panel rehearing which was denied on June 11, 2002. (App. 18).

4. The fundamental right to receive notice was raised in each of the courts below. The federal issue that notice of entry of judgment is mandatory was first brought to the attention of the Court of Special Appeals in briefs. Petitioner argued in part that "the ends of justice would be served if the judgment was vacated or simply reissued and if plaintiff's right to appeal the case resurrected." More elaborate arguments were raised in oral argument. The court ruled, "The ruling indeed was 'made in the course of a hearing or trial,' and therefore was not subject to the [notice] mandate of Rule 1-324." The court did not address in any way counsel's argument that Maryland

Rule 2-601, adopted to follow Federal Rule 58, included a mandatory notice provision.

Additionally, the case of *Byrum v. Horning* which explicitly connected Maryland Rule 2-601 to Federal Rule of Civil Procedure 58 in language and principle was brought to the attention of Maryland Court of Appeals. *Byrum v. Horning*, 360 Md. 23, 756 A.2d 560, 561 (Md. 2000). This was set forth in petitioner's writ for certiorari to the Maryland Court of Special Appeals. The court of appeals denied the writ as not in the public interest.

5. This petition for writ of certiorari to the Court of Appeals of Maryland followed.

In denying petitioner's motion to vacate the circuit court ruled that petitioner could have perfected his premature appeal that was filed prior to entry of judgment:

> "The Order entering judgment in this case was entered after a jury trial, in accordance with the verdict returned by the jury in open court. Thus, plaintiff and defendant received actual notice of the judgment on the date that it was entered." (App. 15).

The court determined that "entry" occurred on the date the foreperson read the verdict in open court and that the parties received "actual notice" on this date. Separate notice was, therefore, not required when the judgment was entered on the docket.

Review of this case is all the more compelling considering that no Maryland case reinforces the separate notice requirement that is embedded in the newly adopted 2-601(c)(2). The instant ruling that

allows a judgment to be entered on the docket without notice is now the law in the State of Maryland. It can be indiscriminately applied to prematurely cut off the life of a case simply because a party waited for notice of the entry of judgment. Notice is the cornerstone of our judicial system and notice of the entry of judgment is no less important than legal process. Both invoke federal and state constitutional rights. [3]

Litigants need to count on appellate timetables. The simple issue remains as to whether the separate notice requirement is an absolute mandate or whether it may be discarded based on exigencies or intervening events. In this case such circumstances include the reading of the verdict in open court or the filing of a premature appeal.

REASONS FOR GRANTING WRIT

I. THE RULING OF THE COURT OF APPEALS OF MARYLAND RUNS CONTRARY TO THE MARYLAND RULES AND CASELAW

Petitioner's counsel was clearly in the dark during the thirty-day appeal period acting without any knowledge whatsoever that judgment had been entered on July 20, 2000. Without notice his efforts were to no avail. And when he did finally receive notice of the entry of judgment his only remedy at that point was to have the judgment vacated and reissued

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[3] See e.g. *Harvey*, 29 A.2d at 278 (holding that a valid proceeding cannot be had against a person until he has been notified thereof by proper summons and unless he voluntarily waives such constitutional right.)

so that he could timely note an appeal. Caselaw and the Maryland Rules have held that the failure to provide notice of a judgment is such an irregularity allowing the judgment to be vacated and reissued. The problem is that none of these cases dealt with a fact pattern where a verdict was previously announced in court.

This conflict also arose because there are two rules at issue that appear to yield different results in determining whether notice is required. Without precedence on the issue the trial court was able to apply an old rule, Maryland Rule 1-324, that only requires notice of an order "not made in the course of a hearing or trial". The court was able to ignore the newly enacted 2-601(c)(2) that appeared to make notice an absolute requirement. To make matters worse Rule 2-601 references 1-324.

There were two mitigating events that the lower court seized on to justify denying petitioner his right to notice and to appeal: 1) The verdict being read in open court by the jury foreperson; and 2) The filing of a premature appeal that petitioner could not follow up on by filing an information report. Notwithstanding these unusual circumstances that inevitably breath life into each case, the issue before this Court is whether the Maryland Rules and our notions of justice were designed to avoid the pitfalls of such twists and turns that could otherwise imperil a litigant's appellate rights. The constant on which jurisprudence rests remains whether precedence is needed to reinforce principles and rules of appellate procedure expanding or contracting them at times to apply to divergent fact patterns. Without precedence cases may find also fall through the cracks. For this reason alone review by

certiorari by the Court of Appeals was in the public interest. [4]

This case presents three basis for this court exercising its jurisdiction. First the case involves an opinion of Maryland's court of last resort that handed down a decision that offends notions of justice. It is a novel issue never addressed by the Maryland Court of Appeals. The ruling also pertains to a rule of procedure that was modeled after Federal Rule of Civil Procedure 58. It consequently involves a federal question that conflicts with decisions of other state courts of last resort and several federal circuit courts. Lastly, this case highlights and mirrors a battle currently brewing in Federal Circuit courts. Three circuits in applying newly adopted Appellate Rule 4(a)(6) have held that written notice of entry of judgment is required while two other circuits have allowed actual notice of the entry of judgment. This issue that is nearly identical to the one presented must be resolved by this Court.

a. <u>The Rulings Of The Lower Courts Have No Support in the Maryland Rules And Established Caselaw In The State Of Maryland</u>

Rule 2-601(a) states that upon the rendering of a ". . . general verdict of a jury. . " the clerk shall "forthwith prepare, sign and enter the judgment." The

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[4] The court of appeals' discretion is granting writs of certiorari lies where review and determination is desirable and in the public interest. Code 1957, art. 5, §21A; art. 26, §130; Maryland Rules, Rule 811; *Walston v. Sun Cab Co., Inc.*, 298 A.2d 391, 267 Md. 559 (Md. 1973).

clerk of the court in this case prepared the judgment in a timely manner although took over forty days to enter it on the docket. (App. 22). This certainly was not done "forthwith" and none of the parties waived notice. [5] The date of entry is dictated by Rule 2-601(b) and 8-202(f) as the date the clerk first makes a record of it on the docket and records the actual date of entry. This date of entry becomes the "date of the judgment". It is from this date of entry that Rule 8-202(a) fixes the thirty-day period to file an appeal. Therefore, the court erred in finding that entry occurred when the verdict was read in open court.

Rule 2-601(c)(2) added the notice requirement. It was added by amendment to Rule 2-601 in 1997 to "comport with federal practice" as set forth in Federal Rule 58 and to "address the need for clear, complete, and precise judgments." [6] 24 Md. Reg., Issue 9, Friday,

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[5] Notice upon entry is especially important where there is a significant lapse in time between the trial and entry of the judgment on the docket as was the case here. The Maryland Rules must apply to and safeguard against such mishaps.

[6] *Byrum v. Horning*, 360 Md. 23, 756 A.2d 560, 561 (Md. 2000), citing Reporter's Note to Proposed Rule 2-601, 23 Md. Reg., Issue 24, Friday, Nov. 22, 1996, at 1667. The reason for this amendment was set forth in the history of the rule as noted in the reporter's note, reading in relevant part: "At the Court conference on the One Hundred Twenty-Seventh Report, there was considerable sentiment that the proposed amendment did not go far enough in the direction of Fed. R .Civ.P. 58 . . . The amendment provides that a judgment is not effective until it is set forth in writing in accordance with section (a) and is entered as provided in section (b). This comports with current federal practice and with pre-1984 equity practice in Maryland." *Byrum*, 756 A.2d at 561, citing See *Eberly v. Eberly*, 253 Md. 132, 251 A.2d 900 (Md. 1969).

Apr. 25, 1997, at 650. It requires the clerk to send copies of the judgment to the parties in accordance with Rule 1-324. The rule concludes with concise and emphatic language: "A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule." [7] *Jenkins v. Jenkins*, 112 Md. App. 390, 410, 685 A.2d 817, 827 (Md. App. 1997).

Rule 1-324 in turn requires notice by mail of all rulings "not made in the course of a hearing or trial." (App. 22). It would appear a "reasonable" interpretation that this rule applies to evidentiary rules and orders disposing of motions made during a trial and not to final judgments such as the grant of summary judgment or verdicts which conclude a trial. [8] However, the trial court seized upon this opening and ruled that the verdict was a ruling made in the course of a trial since it was announced by the foreperson. Therefore, it ruled that notice was not required under Rule 1-324. The court ignored and did not reference in any way the language of 2-601(c)(2). But it was given the option of applying 1-324 or 2-601(c)(2) because of the reference to 1-324 within 2-601.

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[7] The Federal Rules of Civil Procedure closely resemble Maryland 2-601. App. 22 It provides - - - - .

[8] The cardinal rule of statutory construction is to ascertain and effectuate the actual intent of the promulgating body. *Jenkins*, 685 A.2d at 828 (Md. App. 1996)(applying law of statutory construction to the interpretation of 2-601(d) by determining if the Court's intent coincides with the Rule's plain meaning). The special court of appeals did not embark on any analysis of statutory construction and the court of appeals simply missed the opportunity to do so denying the writ.

The law of statutory construction dictates the application of the blunt force of logic to the interpretation of 2-601 in light of the seemingly ambiguous language of 1-324. [9] Considering the language of the rule as a whole as we must Rule 2-601 not only requires notice but it also stipulates that the grant of judgment does not occur until the judgment is entered on the docket. Considering that Rule 8-202(a) also commences the appeal period from this point of entry it is simply "reasonable" to presume that notice of entry is an absolute unequivocal requirement, otherwise such important post trial rights could not justly arise from this date. This is especially true because the parties have no insight or control over when the clerk of the court decides to enter the judgment. This rationale is even apparent in the committee notations upon amending 2-601 to mirror Fed. R. Civ. P 58. [10]

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[9] A court faced with determining the meaning of a particular statutory provision or section, even where its language appears to be clear and unambiguous, must not confine interpretation to the isolated provision or section in question, but must examine the provision or section in its context." *Haskell v. Carey*, 294 Md. 550, 451 A.2d 658, 662 (Md. 1982). If language is ambiguous it shall be construed reasonably and with reference to the purpose to be accomplished. Id.

[10] In a 2000 court of appeals case the court identified the reasoning behind the amending 2-601 and requiring a separate document and notice of its entry. The court noted that in the past "where the opinion or memorandum has not contained all the elements of a judgment, or where the judge has later signed a formal judgment, it has become a matter of doubt whether the purported entry of judgment was effective, starting the time running for post verdict motions and for the purpose of appeal." *Byrum*, 756 A.2d at 561, citing Fed. R. Civ. P. 58 (1963 advisory committee note).

The event of entry puts the appellate wheel in motion and affects the finality of all evidentiary and substantive rulings of the court made in course of the litigation. Schedules and deadlines revolve around this date and to put a final judgment in the same pot as other evidentiary rulings made in the course of a hearing or trial is bewildering. However, without controlling authority to the contrary lower courts will retain the discretion to apply either 1-324 with its conditional language or 2-601(c)(2) in satisfying the important notice provision. In sum the elder Rule 1-324 should not be allowed to "supplant" the newly enacted 2-601. See *Byrum*, 756 A.2d at 565 (Md. 2000).

The Court of Special Appeals likewise did not even mention let alone address the requirements of 2-601(c)(2). (App. 1-13). It primarily relied on the fact that petitioner filed a premature appeal which he abandoned when he decided he could not to file an information report. The special court of appeals appeared to stumble over itself in declaring, "Consequently, appellant could have filed an Information Report as late as within ten days after July 20, 2000." The court ignored the fact that petitioner was not aware of the July 20th entry of judgment and, therefore could not file it within ten days. This was precisely why the appeal was abandoned, why petitioner lost his appeal and why the case was on appeal.

Secondly, premature notices of appeal are generally of no force and effect because premature appeals are jurisdictional defects. [11] They only may carry weight upon the proper grant of judgment which only occurs when the clerk of the court complies with 2-601. Since the provisions were not fulfilled the judgment was ineffective and subject to being vacated. Therefore, on another level the premature appeal was of no force. Caselaw in Maryland also holds that oral opinion or ruling that will be embodied in a written document in the future are of no effect and are not ripe for appeal.

The court's rationale and error is most evident in the following:

> "Appellant himself was aware of the jury's verdict that was read in open court on June 6, 2000. Therefore, the appellant had notice of the decision, and we see not merit in his attempts at swooping upon any merely technical imperfections, assuming such even exist in this case. The appeal he noted on July 7, 2000 indicates that he was aware that the jury had reached a decision with which he did not agree."

The court seems to view the reading of the verdict in court as interchangeable or synonymous with mailing a

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[11]While the rules provide for a premature filing they are nonetheless viewed with disfavor as jurisdictional defects. *Sapero & Sapero et al. v. Bel Air Plumbing & Heating Contractors, Inc. et al.*, 41 Md. App. 251, 396 A.2d 317 (Md. App. 1979); *Jenkins,* 685 A.2d at 826 (Md. App. 1996).

copy of the judgment upon entry. It further labels the failure to notify petitioner of the entry of judgment as a "mere technical imperfection." The court could not, however, cite authority that the circumstances presented did not qualify as an irregularity. That is because the case presents novel issues.

b. The Lower Courts Erred in Refusing to Set Aside The Judgment Because The Failure to Notify Petitioner of Entry Of Judgment Was An Irregularity

Under the Maryland law the power to set aside a judgment upon motion has been described as a power "incident to all courts of record," as a power based on "equitable grounds" and as the exercise of a "quasi equitable power." [12] In other words the court has the discretion to correct clerical errors in Maryland in order to "subserve the ends of justice". [13] The decision to overturn a judgment upon the expiration of the thirty-day period lies within the sound discretion of the court as long as there is a showing that an irregularity exists. *Shaw v. Adams*, 263 Md. 294, 283 A.2d 390, 391 (Md. 1971); see also *Williams v. Snyder*,

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[12] *Tasea Investment Corporation v. Dale*, 222 Md. 474, 160 A.2d 920, 923, (Md. 1960), citing See, for example, *Kemp v. Cook*, 18 Md. 130 (MD. 1861); *Doresey v. Gary*, 37 Md. 64 (Md. 1872); *Waters v. Engle*, 53 Md. 179 (Md. 1880).

[13] *Harvey v. Slacum*, 29 A.2d at 278 (Md. 1942); *Crawford v. Richards*, 193 Md. 236, 66 A.2d 483, 485 (Md. 1949). In *Crawford* the court held, "When a party has complied with all the requirements of the law, there is no rule of right reason which would punish him for the errors of a ministerial officer of the court." Id.

155 A.2d 904, 907 (Md. 1959). Therefore it is a matter of law. A judgment can be vacated pursuant to the rules upon a finding of "fraud, mistake or irregularity" or the failure of a clerk to perform a duty required by statute or rule. Md. Rule 2-535; Maryland Code §6-408; *Kramer v. McCormick*, 59 Md. App. 193, 474 A.2d 1346, 1352 (Md. App. 1984).

The moving party must also show by satisfactory proof (1) that he acted in good faith and with ordinary diligence, (2) that he has a meritorious defense or cause of action and (3) that the facts and circumstances prove the existence of an irregularity with clear and convincing evidence. [14] Since the court did not determine whether this test was satisfied Petitioner seeks the remanding of the case with instructions as to whether notice is required under the circumstances present.

If certiorari is granted petitioner will be able to pass this threshold test that he acted in good faith and diligently pursued his appeal. In order to determine the precise date of entry so that he could determine when the information report was due and when to properly note his appeal counsel undertook the following efforts:

- Telephoned the court four time and visited it once;
- Corresponded with the court on August 9, 2000 representing that judgment had not been entered even though it had;
- Submitted a proposed final judgment to the court; and

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[14] *Tandra v. Tyrone*, 336 Md. 303, 648 A.2d 439, 444, (Md. 1994)

- Moved the court to vacate the judgment.

Regarding the "certainty" standard it is undisputed that petitioner's lead counsel who had received all prior notifications and orders from the court did not receive notice. The failure to notify petition is evident in (2) the record extract or case docket states that he did not receive notice; (2) the Agreed Statement of Facts signed by counsel and the court; (3) affidavits from petitioner's lead and local counsel; and 4) the conduct of counsel. [15] Under Rule 1-321 he had a right to notice of the entry of judgment. *J.T. Masonry Co. v. Oxford Const*, 539 A.2d 694 (Md. App. 1988). Furthermore, it cannot be said that petitioner undertook any position which was inconsistent with his right of appeal. [16] Lastly, petitioner clearly has a meritorious cause of action because respondent admitted liability and petitioner won a jury verdict for damages.

As noted there are no court of appeals cases that directly and without exception require notice of the entry of a judgment under the newly adopted Rule 2-

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[15] See, *Maryland Lumber Company v. Savoy Construction Co., Inc.*, 286 Md. 98, 405 A.2d 741, 744 (Md. 1979). In that case the testimony of the assistant chief depute of the clerk testified that notice of entry of default judgment was sufficient to support finding of an irregularity. In this case the record extract would appear prima facia proof of an irregularity.

[16] *See Driggs Corp. v. Maryland Aviation Administration*, 348 Md. 349, 704 A.2d 433, 439 (Md. 1998)(holding that the right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below.) For example, at all times petitioner refused respondents' offer to pay the amount of the judgment and he stated his intent to appeal.

601(c)(2). This is why certiorari must be granted. There are, however, numerous cases that hold that the failure to provide a copy of an order required to be sent pursuant to Rule 1-324 are grounds for exercising the court's revisory power under either Rules 2-535 and 6-408. [17] In these case a "new period for appeal" was provided to the movant pursuant to Rule 2-535 where the judgments were not made in the course of a hearing or trial. See e.g. GEICO, 536 A.2d at 1217. However, it should be noted that these cases preceded the enactment of Rule 2-601(c)(2) in 1997 and are not applicable under the current law. Therefore, the issue presented does not have controlling precedence that squares firmly with the facts presented here.

II. MARYLAND'S COURT OF LAST RESORT RULED ON AN IMPORTANT FEDERAL QUESTION THAT HAS NOT BEEN DECIDED AND CONFLICTS WITH DECISIONS OF OTHER STATE COURTS AND OF SEVERAL UNITED STATES COURTS OF APPEAL

As noted the precise issue presented involves whether notice is required of the entry of judgment where the judgment was previously rendered in open court. This is an issue that the Maryland Court of Appeals has not yet ruled on. Additionally, it involves

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[17] *Greer*, 556 A.2d at 1142, citing *GEICO v. Ropka*, 74 Md. App. 249, 536 A.2d 1214, 1217 cert. denied, 312 Md. 601, 541 A.2d 964 (1988); *Alban Tractor Co. v. Williford*, 61 Md. App. 71, 484 A.2d 1039 (1985); *Kramer v. McCormick*, 474 A.2d 1346, 1353 (Md. App. 1984); *Maryland Lumber Company v. Savoy Construction Co., Inc.* 405 A.2d 741, 744 (Md. 1979); *Dypski v Bethlehem Steel Corp.*, 74 Md. App. 692, 539 A.2d 1165, 1168 (Md. App. 1988).

an important federal question and arguably an important federal procedural rule. Federal Rule of Civil Procedure 58 contains nearly identical provisions to Rule 2-601 regarding the treatment of and notice of final judgments. The Maryland Rule was intended to follow the Federal Rule. There are also some important differences. Nowhere in the federal rules does it specify that only judgments "not made in the course of a hearing or trial" shall be served. That is clearly because such language would undermine the purpose and principles of the notice requirement in light of the 30-day tolling of the appeal period and the time to file dispositive motions. Appellate Rules 4(a)(7), 4(a)(1)(A).

A judgment is defined as a decree or order from which an appeal lies. Fed. R. Civ.P. 54(a). Federal Rule 58 contains the following nearly identical language employed by Maryland Rule 2-601(a): 1) Upon a "general verdict of a jury"; 2) the clerk shall "unless otherwise ordered by the court"; and 3) "forthwith prepare, sign and enter the judgment". (App. 22). Federal Rule 58 then stipulates that the judgment is only effective when entered pursuant to Rule 79(a) which is also identical language to Rule 2-601(a). Federal Rule 77(d) requires the following:

> "**(d) Notice of Orders or Judgments.** Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry in the manner provided for in Rule 5(b) upon each party who is not in default for failure to appear."

This language has been held as mandatory requiring clerks of all federal court's to give notice of a final judgment. [18]

This Court in *Hill v. Hawes* explicitly reinforced the notice provision of Rule 77(d) holding that a party was entitled to "rely" on notice. 320 U.S. 520 (1944). There the Court held that if the clerk failed to send notice of entry of judgment the court had discretion, after the time for appeal had run, to vacate its judgment and enter a new judgment from which a timely appeal could be taken. This Court added that "It may well be that the effect to be given to Rule 77(d) is that although judgment is final for other purposes it does not become final for the purposes of starting the running of the period for appeal until notice is sent in accordance with the rule." Id. at 523.

This ruling inspired considerable controversy among those who though it might undercut the finality of judgments. Court's responded by imposed a duty upon counsel to undertake diligent efforts to discern the status of the case. [19] These cases, however, all

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[18] *Raddack v. Norwegian America Line Agency, Inc.*, 318 F.2d 538 (2nd Cir. 1963)(holding that where notice was not given pursuant to Rule 77(d) the district court could vacate the judgment pursuant to Rule 60(b)(6) to "re-start" the time for filing a new appeal); *Branden v. University of Pittsburg*, 552 F.2d 948 (3rd Cir. Pa. 1977); *See e.g. U.S. Felix-Meza*, 825 F.2d 1334 (9th Cir. 1987); *Central Operating Co. v. Utility Workers of America, AFL-CIO*, 491 F.2d 245 (4th Cir. 1974).

[19] *Mizell v. Attorney General of the State of New York*, 586 F.2d 942 (2nd Cir. 1978); *Latham v. Wells Fargo Bank*, 987 F.2d 1199, 1201 (5th Cir. 1993); *Stevens v. ITT Sys., Inc.*, 868 F.2d 1040, 1041 (9th Cir. 1989)(denying motion where counsel exhibited no diligence; *Leiberman v. Gulf Oil Corp.*, 315 F.2d 403 (2nd Cir. N.Y. 1963); *Spika v. Village of Lombard, Ill.*, 763 F.2d 282, 286 (7th Cir. 1985).

reinforced the mandatory notice provision albeit with this watered down condition. However, that diligence requirement was dropped when Appellate Rule 4(a)(6) was amended in 1991 to allow for the opening of the appeal period for failure to serve notice. *See below for analysis*. Notwithstanding, *Hill v. Hawes* has never been overturned and has been followed by federal circuits and the Supreme Court of Idaho. *Johnston v. Pascoe*, 100 Idaho 414, 599 P.2d 985 (Idaho 1979)(upholding the principle set forth in *Hill v. Hawes*).

The federal rules thus offer consistency and certainty recognizing that one must have notice of the entry if the appeal period and the period to file post trial motions under Rules 50, 54(d) and 59 tolls from this date. See *Wright & Miller, Federal Practice and Procedure*, §2781, pg. 9. This principle of justice flows from constitutional due process considerations which also presuppose notice. It is only fitting that similar principles of reasonableness, consistency, clarity and justice be applied to the Maryland Rules which under their current application do not require notice in all circumstances. Clerks simply have the discretion to determine if a judgment was made in the course of a hearing or not. This does not provide consistency.

a. The Newly Adopted Appellate Rule 4(a)(6) Provides for the Reopening Of The Appeal Period For Failure To Provide Notice, However, Federal Circuits Differ On Whether This Requires Written Or Actual Notice Of The Entry of Judgment.

On the federal level Appellate Rule 4(a)(6) specifically provides that the district court may reopen the time to file an appeal if (a) a party that was entitled to notice of the entry of judgment did not receive notice within 21 days after entry, (b) the motion is filed within 180 days of the entry of judgment or within 7 days upon a party receiving notice; and (c) no party is prejudiced by the opening of the appeal period. This rule has been held to require written as opposed to actual notice of the entry of judgment in the first, second, fifth and D.C. federal circuits. [20] This means that if the clerk does not send notice of judgment to the parties within 21 days of entry the appeal period may be reopened. This is true even if the parties had actual notice of entry by other means. This eviscerates the diligence requirement and reinforces notice as an absolute mandate. Because the rule was recently promulgated the eighth and ninth circuits have made contrary rulings holding that actual notice is sufficient.

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[20] *Scott-Harris v. City of Fall River*, 134 F.3d 427, 433-435 (1st Cir. 1997), rev'd on other grounds, 523 U.S. 44 (1998); *Ryan v. First Unum Life Ins. Co.*, 174 F.3d 302, 305 (2d. Cir. 1999); *Benavides v. Bureau of Prisons*, 79 F.3d 1211 (D.C. Cir.2000); *Bass v. United States Dep't. of Agric.*, 211 F.3d 959, 962-963 (5th Cir. 2000)

[21] For example if a party received notice by phone of the entry of judgment the Rule 4(a)(6) application would have to be filed within 7 days.

There is a wide split in the application of Appellate Rule 4(a)(6) centering around whether written or actual notice of the entry of judgment is required by rule 77(d). Federal Courts are again resistant to require written notice. Of course the case at hand involves whether actual notice upon the rendering of the judgment is sufficient to obviate the need for written notice once the judgment is entered. It does present a slight twist. However, the controversy among federal circuits and states that follow the federal rules, like Maryland, must be resolved. Otherwise inconsistent treatment of such important provisions will continue to create pandemonium resulting in the loss of appellate rights.

It is significant that prior to the amendment to Rule 4(a)(6) in 1991 notice was viewed as a convenience to the parties rather than a mandatory right. Under this scheme, however, numerous litigants lost their right to appeal because they did not receive notice of the judgment. [22] The advisory committee found this a

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[21] *Nunley v. City of Los Angeles*, 52 F.3d 792, 794 (9th Cir. 1995); *Lowery v. McDonnell Douglas Corp.*, 211 F.3d 457, 464 (8th Cir. 2000)

[22] *See e.g. Tucker v. Com. Land Title Ins. Co.*, 800 F.2d 1054 (11th Cir. 1986); *Polylok Corp. v. Manning*, 793 F.2d 1318 (C.A.D.C. 1986); *Ashby Enterprises, Ltd. V. Weitzman, Dym & Associates*, 780 F.2d 1043 (C.A.D.C. 1986). Rule 77(d) was amended to "ease the strict sanctions now imposed on appellants whose notices of appeal are filed late due to failure to receive notice of entry of judgment." Advisory Committee Note, 134 F.R.D. at 698. The Advisory Committee also found it unrealistic to expect counsel to keep tabs on the court and, therefore, put the burden of notice on prevailing parties. Id. Advisory Committee Note, 134 F.R.D. at 699.

"strict sanction" for such an important event that the parties could not control.

The Federal Rules also provide as does 2-601(a) that a judgment is only effective when reduced to a separate document and when entered on the docket. *State v. Mason*, 205 S.E.2d 819, 157 W.Va. 923 (1974); *Bankers Trust Co.v. Mallis*, 435 U.S. 381, 98 S.Ct. 1117, 55 L.Ed.2d 357 (1978); *U.S. v. Indrelunas*, 411 U.S. 216, 222 (1973); *Pearson v. Dodd*, 159 W.Va. 254, 221 S.E.2d 171 (W.Va. 1975). The lower court found that entry occurred upon the rendering of the judgment by the jury foreperson and that petitioner could have appealed at this time. This ruling runs contrary to notions of fundamental fairness and to the above cited federal laws.

Petitioner suggests that on the issues presented the lower court's ruling undercuts prevailing Maryland law, rulings of the Supreme Courts of Idaho and West Virginia and the opinions of federal circuit courts and this Supreme Court. Federal policy on the treatment of judgments is enshrined in the federal rules based on carefully chosen due process considerations emanating from the constitution. It is these rules that we chose to live by and they must not be abandoned by even a single state.

CONCLUSION

Two Maryland cases support petitioner's position. *Byrum v. Horning*, 756 A.2d at 561(reinforcing mandatory language of Rule 2-601); *Davis v. Davis*, 335 Md. App. 669, 646 A.2d 365 (Md. 1994)(holding that the rendering of a verdict does not equate with the entry of judgment unless the court explicitly so orders). Notwithstanding the court chose to ignore them. If this court does not grant writ there will result a miscarriage of justice considering Maryland law and the opinions of federal court of appeals.

The principle behind fundamental due process rights dictates that where a substantive right maybe affected a party has aright to notice and the right to be heard. In Maryland the right to appeal is such a substantive right statutorily given. It therefore must be protected if not by the state's highest court then by this Court. This is especially appropriate where that right is based on federal rules adopted and followed by all circuit courts. The right to resurrect an appeal may not affect the finality in a judgment. However, in federal courts and Maryland courts a party who is not served with notice of a judgment may either reopen the appeal period, extend the appeal period or vacate the judgment and reissue a new one from which an appeal may be taken. These are the remedies denied to petitioner who lost his right to appeal. In short this case involves an injustice that must be remedied lest others suffer petitioner's fate.

Petitioner seeks the remanding of this case to determine whether counsel acted in good faith with ordinary diligence and whether petitioner has a meritorious cause of action.

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UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2968

September Term, 2000

MARVIN D. WASHINGTON

v.

SHOWNIKA McCAULEY

Eyler, James R.,
Moylan, Charles E., Jr.
(Ret'd, Specially Assigned),
Thieme, Raymond G., Jr.
(Ret'd, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: October 5, 2001

Appellant Marvin Washington appeals from the denial by the Circuit Court for Prince George's County of his motion to vacate or reissue its original judgment.

Appellant presents the following question for our review, which we have rephrased slightly for clarity:

Did the trial court abuse its discretion in denying appellant's motion to vacate or reissue its judgment?

We answer "no" to this question and affirm the judgment of the trial court.

I.

On June 6, 2000, a jury in the Circuit Court for Prince George's County entered judgment in favor of appellant Marvin Washington in the amount of $952.00 in the negligence claim he brought forth against appellee Shownika McCauley. The verdict was read in open court on that date, and the court clerk reduced it to writing on June 8. Judgment was entered in the docket on July 20. Appellant filed an appeal on July 7, 2000, which was dismissed by this Court on August 16, 2000, because appellant had not filed a Prehearing Information Report. On October 10, 2000, appellant filed a motion with the trial court pursuant to Md. Rule 2-535 and Md. Ann. Code §6-408 requesting that it vacate or reissue the judgment it had entered.[1] The court denied this motion, and this appeal followed.

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[1]Md. Rule 2-535 states, in pertinent part::

> (a) *Generally.* On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534.
>
> (b) *Fraud, Mistake, Irregularity.* On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

II.

At first glance this case presents itself as rather Gordian insofar as its procedural posture. This is beguiling, however, as the case hinges on rather modest principles of well-established procedure that unmask the attempt by appellant by means of this appeal to take a second bite from the appellate apple. Appellant appealed this case before to this Court. It had reached its fateful end when we dismissed his appeal on August 16, 2000, because appellant failed to file an Information Report. Subsequently, appellant returned to the trial court, and requested that it vacate or reissue its original judgment , apparently solely to gain the opportunity to have another judgment from which to appeal. Once the appeal had been dismissed by this Court, however, the judgment of the trial court was final. The appellant then filed a motion to vacate or reissue its original judgment. This was denied by the trial court. The court correctly denied appellant's motion. We agree that there was no basis by which the

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Md. Code (1974, 1998 Repl. Vol), §6-408 of the Cts. & Jud. Proc. Article. provides:

> For a period of 30 days after the entry of a judgment , or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment. After the expiration of that period the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk's office to perform a duty required by statute or rule.

trial court could have vacated or reissued its original judgment.

Md. Rule 8-205 sets forth the requirement regarding the filing of an Information Report. It states, in pertinent part:

> (b) *Report by appellant required.* Upon the filing of a notice of appeal, the clerk of the lower court shall provide to the appellant an information report form prescribed by the Court of Special Appeals. Unless an expedited appeal is elected pursuant to Rule 8-207, the appellant shall file with the Clerk of the Court of Special Appeals a copy of the notice of appeal and a complete and accurate information report.
>
> (c) *Time for filing.* When a notice of appeal is filed more than ten days after the entry of judgment, the information report shall be filed within ten days after the filing of the notice. When the notice of appeal is filed within ten days after the entry of judgment, the information report shall be filed within ten days after the expiration of that ten-day period, if no post judgment motion pursuant to Rule 2-532, 2-533, or 2-534 or a notice for in banc review pursuant to Rule 2-551 has been timely filed.

Appellant does not dispute that he had been provided with a Prehearing Information Report when he noted his initial appeal. Nor does he deny that he filed this Information Report, and that his first appeal to this Court was dismissed as a result.

Appellant contends, however, that he could not file an Information Report at that time because it would have been "premature and ineffective." He asserts that he "did not have a judgment to attach to the information report within ten days as required because one had not been entered or mailed and counsel had no notice of it - the appeal was taken on July 7, 2000 and judgment was entered on July 20."

Appellant's first appeal was dismissed by this Court on August 16, 2000 pursuant to Md. Rule 8-206(e), which provides:[2]

> Upon failure of a party or attorney to comply with Rule 8-205, this Rule, or an order under this Rule,
> the Court of Special Appeals may: (1) dismiss the appeal, (2) assess against the party or attorney the reasonable expenses caused by the failure, including attorney's fees, (3) assess against the party or attorney all or a portion of the appellate costs, or (4) impose any other appropriate sanction.

Appellant and appellee both concede that the judgment by the trial court was entered on July 20, 2000, which was almost a month prior to the dismissal of the appeal by this Court. Appellant apparently has failed to consider Md. Rule 8-602(d), entitled "Judgment entered after notice filed." It states:

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[2] We made no mention of Md. Rule 8-602(a) (4) in our Order of Dismissal. That rule provides: "On motion or on its own initiative, the Court may dismiss an appeal [because] an information report was not filed as required by Rule 8-205."

A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

See also Byrum v. Horning, 360 Md. 23 (2000).

Md. Rule 8-602 clearly protected the original appeal filed by appellant from being dismissed as premature. Therefore, we reject the contention by appellant that his appeal was premature before final judgment was entered in the trial court docket on July 20, 2000. The announcement by the trial court of its ruling took place in open court on June 6, 2000, and the signing by the trial court of its ruling took place on June 8, 2000, which was subsequent to both the announcement and signing by the trial court of its ruling. The application of 8-602(d) to these circumstances requires that the notice of appeal filed by appellant be treated as filed on July 20, 2000, which is the day the judgment was entered on the docket. Consequently, appellant could have filed an Information Report as late as within ten days after July 20, 2000. Appellant, however, failed to do so. Over two weeks passed between the entry of the judgment in the docket and the dismissal of the appeal by this Court in which appellant could have filed an Information Report. Therefore, appellant cannot argue successfully that his appeal was premature and that he was unable to file an

Information Report. Moreover, appellant never withdrew his appeal as premature, this Court did not dismiss appellant's appeal as premature, and appellee did not object to the noting of appellant's appeal as premature. It was appellant that unilaterally concluded that his appeal was premature and that consequently he could not file an Information Report. Appellant never attempted to file an Information Report originally, even before the entry of the judgment, although he could have provided this Court with most of the information required by the Report at that time.

Appellant brings this second appeal in an attempt to have us reverse the trial court's refusal to strike its entered judgment and reissue a final judgment so that he will have an established date from which to note another appeal. Appellant stated in a Motion filed with the trial court that "the ends of justice would be served if the judgment was vacated or simply reissued and if plaintiff's right to appeal the case resurrected." As such, appellant concedes that he has no grounds from which to appeal should the trial court's judgment remain intact. Therefore, appellant argues that the trial court erred by denying his motion to revise its judgment pursuant to Md. Rule 2-535. In particular, appellant asserts that, "at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity." He claims that "the failure to provide notice to both local and lead counsel for Appellant constituted an such an

such an 'irregularity.'" We agree that the failure to provide notice to a party in certain circumstances can be considered an "irregularity" under Md. Rule 2-535. *Greer v. Inman*, 79 Md. App. 350. 353 - (1989). We do not find, however, that such circumstances exist in the instant case.

Appellant concedes that his counsel of record received written notice of the judgment, and that the attorneys that did not receive notice were not counsel of record at the time when the clerk sent appellant notification of the judgment. As such, the court was not required to send them notice of the judgment. Appellant himself was aware of the jury's verdict that was read in open court on June 6, 2000. Therefore, the appellant had notice of the decision, and we see no merit in his attempts at swooping upon any merely technical imperfections, assuming such even exist in this case. The appeal he noted on July 7, 2000 indicates that he was indicates that he was aware that the jury had reached a decision with which he did not agree.

Appellant adds, however, that he did not receive proper notice of the entry of judgment because although appellant's actual lead counsel did not file a written appearance, he nonetheless "filed under his name and signature all motions and other filings throughout the pendency of the case." Appellant asserts that lead counsel therefore should have received notice of the entry of the final judgment pursuant to Rules 1-324 and 1-321."

Md. Rule 1-324 provides:

> Upon entry on the docket of any order or ruling of the court not made in the course of a hearing or trial, the clerk shall send a copy of the order or ruling to all parties entitled to service under Rule 1-321, unless the record discloses that such service has already been made. This Rule does not apply to show cause orders and does not abrogate the requirement for notice of a summary judgment set forth in Rule 2-501 (e).

(Emphasis added).

We find that Rule 1-324 is inapplicable in the instant case. Appellant concedes that the jury's verdict was read in open court on June 6, 2000, and that both parties were present at that time. The ruling indeed was "made in the course of a hearing or trial, " and therefore was not subject to the mandate of Rule 1-324. We have said that Rule 1-324 "is intended to prevent hardships which may result from a lack of notice and the corresponding lack of an opportunity to interpose defenses prior to enrollment of a judgment." *Greer*, 79 Md. App. At 354.

The appellant in *Greer* did not receive a copy of a default judgment that had been entered against her, and therefore contended that such oversight was an "irregularity" under Rule 2-535. *Id.* at 353. We agreed with her, as we held that "the clerk is required to send all parties entitled to service a copy of the default judgment whenever such a judgment is entered without the benefit of a hearing or trial. Therefore, the intent of Rule 1-324 is not affected, and the rule does

not apply. We find that Rule 1-321 is inapplicable as well. Md. Rule 1-321 provides, in pertinent part:

> (a) *Generally.* Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the Court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(Emphasis added).

Appellant asserts that the last pleading filed prior to trial was filed by appellant's lead counsel and not by the attorney that originally had entered his appearance as counsel for appellant. As such, appellant claims that the trial court should have looked to the name and address on that last pleading in order to ascertain to whom a copy of the judgment should have been sent. We note, however, that appellant even failed to provide this Court with a copy of that Motion in his briefs or in a record extract.[3]

Accordingly, we are not obligated to decide this issue. We said in *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91 (2000):

> We will not peruse the record extract to find evidentiary support for appellee's conclusory statements.
>
> The liberalizing provision relating to record extracts in Rule 8-501(c) does not excuse the failure to furnish in the brief references to factual material in support of a party's argument as required by Rule 8-504(a) (4). Nor does the liberalization in Rule 8-501(c) alter the fundamental rule of appellate practice under which the appellate court has no duty independently to search through the record for error.

Id. at 101-02.

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[3] Appellant did not include the Motion in his original brief or reply brief. Appellant did not submit a "Record Extract," but he did include several documents with his original brief; the Motion, however, was not included with those documents.

Appellant has cited no authority directly supporting his contention that Rule 1-321 applies in the present circumstances. In *Anderson v. Litzenberg,* 115 Md. App. 549 (1997), the appellant provided no authority in support of one of his contentions. After reproducing appellant's argument, we said:

> In transcribing this language into our opinion, we did not omit references to cited authority. Cramaro's briefing of this contention is completely devoid of legal authority. In *Oroian v. Allstate Ins. Co.,* 62 Md. App. 654, 490 A. 2d 1321 (1985), appellants contested the admissibility of a computer printout, which was unsigned, unverified, and unauthenticated. We held that because appellants, in their brief, cited no authority for their position, their contention was deemed waived. *Id.* at 658. It is not our function to seek out the law in support of a party's appellate contentions. *See von Lusch v. State,* 31 Md. App. 271, 282, 356 A. 2d 277 (1976), rev'd on other grounds, 279 Md. 255, 368 A. 2d 468 (1977). Accordingly, we shall not address the potential merits of [appellant's] contention.

Anderson, 115 Md. App. at 577-78.

In the interest of completeness, however, we address appellant's contention, albeit briefly. We are not persuaded that Rule 1-321 provides ground under these circumstances for the reversal of the judgment by the trial court. Appellant has cited no case law in support of the proposition that Rule 1-321, which involves service of *pleadings,* likewise applies to notice of court *judgments and orders.* In fact, we think that the existence of Rule 1-324, *infra,* entitled "Notice of

orders" indicates that Rule 1-321 does not apply to notice of court orders.

Appellant has not demonstrated to this Court, whether it be by means of Rule 1-321 or Rule 1-324, that his claim of lack of notice of the entered judgment is grounds for reversal of the decision by the trial court in which it denied his motion to vacate or reissue its original judgment. This Court dismissed appellant's appeal on August 16, 2000, and appellant did not file a Motion for Reconsideration nor did he appeal our decision. The provisions concerning a reconsideration of a dismissal are discussed by Md. Rule 8-602(c). It states specifically that a party can file a motion for reconsideration within ten days of the dismissal by this Court when the appeal is dismissed because an information report was not filed. The Rule states further that the order dismissing the appeal may be rescinded by the Court "if the Court is satisfied that a report . . . complying with the Rules will be filed . . .within a time to be prescribed by the Court. Appellant could have filed a Motion under this Rule that would have brought to the attention of this Court the difficulties he claimed regarding the filing of the Information Report. This he did not do, and, consequently, the dismissal ended all matters regarding this case, and no grounds exist for appellant to reopen it at this time. We conclude therefore that the trial court properly acted within its discretion when it declined to grant appellant's Motion to Vacate or Revise its judgment.

JUDGMENT AFFIRMED.
COSTS TO BE PAID BY APPELLANT.

THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

MARVIN D. WASHINGTON Plaintiff	: :	
v.	:	CAL 96-24348
WEARY E. McFADDEN, *et al.*, Defendants	: :	

Entered January 31, 2001,

MEMORANDUM OPINION AND ORDER

Plaintiff Marvin D. Washington moves this Court to vacate or reissue the final judgment entered on June 6, 2000 in open court, after a jury trial and verdict. That judgment was filed by the Clerk of the Court on June 8, 2000. Plaintiff noted his appeal from that judgment to the Court of Special Appeals on July 7, 2000. On August 16, 2000, on its own motion, the Court of Special Appeals dismissed the appeal "for failure to file an Information Report as required by Maryland Rule 8-205" on or before July 17, 2000.

Plaintiff complains that he received no notice of the final judgment, in accordance with Maryland Rule 1-324. Plaintiff's reliance on that rule is misplaced. Maryland Rule 1-324 provides. in pertinent part (emphasis added):

Upon entry on the docket of any order or ruling of the court **not made in the course of a hearing or trial,** the clerk shall send a copy of the order or ruling to all parties entitled to service under Rule 1-321,

unless the record discloses that such service has already been made.

The Order entering judgment in this case was entered after a jury trial, in accordance with the verdict returned by the jury in open court. Thus, plaintiff and defendant received actual notice of the judgment on the date that it was entered. The fact that the clerk did not file the judgment for two days, and that it was not entered into the court's computer system of recordation for some time thereafter neither precluded timely appeal nor excused plaintiff's failure to file the appellate information report required.

For the reasons noted above, Plaintiff's Motion to Vacate or Reissue Final Judgment is, therefore, DENIED.

This case is closed statistically.

_____

/s/ Sherrie L. Krauser, Judge

Copies mailed by the Court to:

Steven Palmer, Esq.
717 King Street, Suite 310
Alexandria, VA 22314

Anne K. Howard, Esq.
Budow & Noble, P.C.
7201 Wisconsin Avenue, Suite 600
Bethesda, Maryland 20814

_____

/s/ Edna M. Dillard Date
Executive Administrative Aide

FILED
IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

_____
/s/ Plaintiff(s)

Vs. CAL 96-24348

_____
/s/ Defendant(s)

JUDGMENT

ENTERED 7-20-00

This matter having been decided by:

☐ A judge;

☒ A jury verdict,

with Judge Krauser presiding, it is (and Judge Shepard taking the verdict)
this 6 day of June, 2000

ORDERED AND ADJUDGED that:

☐ the complaint is dismissed without leave to amend.

☒ judgment is granted in favor of Marvin D. Washington, Plaintiff
(Party/Parties for Whom Judgment Granted)

And against Shownika A. McCauley, Defendant
(Party/Parties Against Whom Judgment Granted)

☒ In the sum of $ 952.00

☐ all relief is denied.

☒ Costs are assessed against Defendant, Shownika A. McCauley

Vivian Jenkins
CLERK OF THE COURT

ENTERED 7-20-00

MARVIN D. WASHINGTON	*IN THE
	*COURT OF APPEALS
	*OF MARYLAND
v.	
	*Petition Docket No. 464 September Term, 2001
SHOWNIKA MCCAULEY	*(No. 2968, Sept. Term, 2000, Court of Special Appeals)

ORDER

The Court having considered the motion for reconsideration, and request for oral argument filed thereto, in the above entitled case, it is

ORDERED by the Court of Appeals of Maryland, that the motion and request for oral argument be and they are hereby, denied.

/s/ Robert M. Bell
Chief Judge

Date: June 11, 2002

MARVIN D. WASHINGTON	*IN THE
	*COURT OF APPEALS
	*OF MARYLAND
v.	*Petition Docket No. 464 September Term, 2001
SHOWNIKA MCCAULEY	*(No. 2968, Sept. Term, 2000, Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the request for oral argument filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and request for oral argument be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

DATE: December 14, 2001

Rule 4. Appeal as of Right — When Taken

(a) Appeal in a Civil Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered…

(6) **Reopening the Time to File an Appeal.** The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

(7) **Entry Defined.** A judgment or order is entered for purposes of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

Rule 58. Entry of Judgment

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except that, when a timely motion for attorneys' fees is made under Rule 54(d)(2), the court, before a notice of appeal has been filed and has become effective, may order that the motion have the same effect under Rule 4(a)(4) of the Federal Rules of Appellate Procedure as a timely motion under Rule 59. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

Rule 1-324, Notice of Orders.

Upon entry on the docket of any order or ruling of the court not made in the course of a hearing or trial, the clerk shall send a copy of the order or ruling to all parties entitled to service under Rule 1-321, unless the record discloses that such service has already been made. This Rule does not apply to show cause orders and does not abrogate the requirement for notice of a summary judgment set forth in Rule 2-501 (e).

[Amended Apr. 7, 1986, effective July 1, 1986.]

Rule 2-601. Entry of judgment.

(a) *Prompt entry - Separate document.*- Each judgment shall be set forth on a separate document. Upon a verdict of a jury or a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise. Upon a verdict of a jury or a decision by the court granting other relief, the court shall promptly review the form of the judgment presented and, if approved, sign it, and the clerk shall forthwith enter the judgment as approved and signed. A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule. Unless the court orders otherwise, entry of the judgment shall not be delayed pending determination of the amount of costs.

(b) *Method of entry - Date of judgment.*- The clerk shall enter a judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court,

and shall record the actual date of the entry. That date shall be the date of the judgment.

(c) *Recording and indexing.*- Promptly after entry, the clerk shall (1) record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court and (2) note on the docket the date the clerk sent copies of the judgment in accordance with Rule 1-324.

[Amended Apr. 4, 1986, effective July 1, 1986; Apr. 8, 1997, effective Oct. 1, 1997; Nov. 1, 2001, effective Jan. 1, 2002.]

Supreme Court, U.S.
FILED
OCT 11 2002
OFFICE OF THE CLERK

No. 02-391

IN THE

Supreme Court of the United States

MARVIN D. WASHINGTON,

Petitioner,

v.

WEARY E. MCFADDEN and SHOWNIKA A. MCCAULEY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MARYLAND COURT OF APPEALS

BRIEF IN OPPOSITION

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REASONS FOR DENYING THE PETITION

The ruling of the Maryland appellate courts are consistent with the Maryland Rules of Civil Procedure and Maryland case law. Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

I. Maryland Law Provided Petitioner an Automatic Right of Appeal to the Court of Special Appeals Following the June 6, 2000 Jury Trial.

Pursuant to Maryland law, the only method of securing review by the Court of Special Appeals is by the filing of a Notice of Appeal within thirty days after entry of the judgment or order from which the appeal is taken. *See* Maryland Rule 8-201, 8-202.[1] Maryland Rule 8-205 requires the filing of an Information Report by the appealing party within ten days of the filing of the appeal. It is undisputed that Petitioner filed a Notice of Appeal on July 7, 2000. It is further undisputed that Petitioner did not file a Prehearing Information Report. The Maryland Court of Special Appeals dismissed the appeal filed on July 7, 2000 due to Petitioner's failure to file the Prehearing Information Report. (Pet. App. 4).

Maryland Rules of Civil Procedure 8-602 provide a mechanism for an appellant who has had his appeal dismissed for any reason, including a failure to file a Prehearing Information sheet to seek reconsideration from the appellate court as to the dismissal. Petitioner never filed any such motion for reconsideration. Petitioner did not appeal the Court of Special Appeals' dismissal of his appeal.

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1. Respondents provide in their Appendix the text of Maryland Rules cited in their Brief in Opposition with the exception of those rules set forth in Petitioner's Brief and/or Petitioner's Appendix.

Petitioner's position is that the appeal filed on July 7, 2000 was flawed because it was essentially filed too early. That is to say the Notice of Appeal was filed prior to the judgment being entered in the docket by the Circuit Court for Prince George's County.

In light of Maryland Rule 8-602(d), the filing of a Notice of Appeal by Petitioner on June 7, 2000, thirteen days before the clerk's office entered the judgment on the docket is irrelevant. Maryland Rule 8-602(d) provides as follows:

> A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

See also Byrum v. Horning, 360 Md. 23 (2000).

Maryland Rule 8-602(d) clearly protects the original appeal filed by Petitioner from being dismissed as premature. The rule essentially deems the appeal to have been noted as of July 20, 2000. As such, under Maryland law, the Notice of Appeal filed by Petitioner on July 7, 2000 was not flawed in any way.

As the Court of Special Appeals noted, Petitioner unilaterally concluded that his Notice of Appeal filed on July 7, 2000 was flawed as premature. (App. 7). Petitioner argues he could not timely file the Prehearing Information Report because he did not have a copy of the Judgment. In its ruling, *sub judice*, the Court of Special Appeals points out that an Appellant is asked to file the Prehearing

Information Report with the information available. No effort to file even a partially completed Prehearing Information Report was made by Petitioner. Waiting for a copy of the Judgment does not excuse an Appellant from the duty to file the Prehearing Information sheet within ten days of the Notice of Appeal.

Moreover, as indicated above, Maryland Rule 8-602 deems the appeal to have been noted on July 20, 2000. That is the date the clerk's office entered judgment on the docket. Petitioner had ten days from July 20, 2000 to file the Prehearing Information sheet. Petitioner did not do so. Petitioner presents substantial discussion as to the fact the clerk's office did not mail the July 20, 2000 Judgment notice to Mr. Palmer. Again, however, Petitioner did not use Maryland Rule 8-602 to seek reconsideration of the dismissal of the appeal filed on July 7, 2000, in light of the fact that Mr. Palmer did not receive a copy of the July 20, 2000 judgment notice. Additionally, Petitioner did not note an appeal from the Court of Special Appeal's ruling.

At no time did Petitioner withdraw the appeal noted on July 7, 2000. As discussed above, this appeal was not premature. Respondents never sought to have the Notice of Appeal dismissed as premature. The Court of Special Appeals of Maryland did not dismiss the Notice of Appeal filed on July 7, 2000 as untimely or premature, nor would such actions by the Respondents or the court of Special Appeals have been proper. Maryland Rule 8-602(d) clearly protected the Notice of Appeal filed on July 7, 2000 by Petitioner from dismissal as premature.

Maryland law entitles Petitioner to one appeal. Petitioner noted an appeal. Petitioner never withdrew that appeal.

Petitioner did not comply with the procedures for continuing to perfect that appeal. Petitioner's appeal was subsequently dismissed. No challenge to the dismissal of that appeal was made by Petitioner. Rather, the Petitioner filed a motion with the circuit court asking that a judgment be reissued in light of the fact that Mr. Palmer did not receive a copy of the judgment entered on the docket on July 20, 2000. Petitioner presents a lengthy discussion regarding the clerk's failure to mail a copy of the July 20 docket entry to Mr. Palmer. Respondents submit that this discussion is beside the point. The dismissal of Petitioner's appeal noted on July 7, 2000 was proper and fully in conformity with Maryland law. Petitioner has failed to set forth any authority to support his position that he is entitled to a second appeal. All rulings issued in this case by the Court of Special Appeals and the Court of Appeals do not conflict with federal law or case law from other jurisdictions.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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APPENDIX

APPENDIX — TEXT OF MARYLAND RULES

Rule 8-201. Method of securing review—Court of Specials Appeals.

(a) By notice of appeal. Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk or register shall enter the notice on the docket.

Rule 8-202. Notice of appeal—Times for filing.

(a) Generally, Except as other provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.